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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/785,100

02/15/2001

William Patrick Apps

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CARLSON, GASKEY & OLDS, P.C.
400 WEST MAPLE ROAD
SUITE 350
BIRMINGHAM, MI 48009

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

05/08/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/785,100

Applicant(s)

APPS, WILLIAM PATRICK

Examiner

Stephen J. Castellano

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 52-73 and 95-101 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 52-73, 95-99 is/are rejected.
- 7) ☒ Claim(s) 100 and 101 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claims 1-51 and 74-94 have been canceled. Claims 52-73 and 95-101 are pending.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 52-73 and 95-99 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the claims (drawings) of U.S. Patent No. D400,012 to Apps in view of Roberts, Graser, Chaplin et al. (Champlin) and Marks.

Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 52-73 of the present application are directed to the design of a crate, which is identical to the crate shown and claimed in Apps ('012). The six-pack bottle carrier and bottles are believed to be shown in phantom and as such are not a part of the claims of Apps ('012). Insofar as the claims of Apps ('012) actually claim more than the crate structure recited in the presently claimed invention. It would have been obvious to delete any portions of the crate structure shown that are not claimed if that structure is not deemed to be necessary.

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Apps ('012) claims (drawings) disclose the invention except for the bottle carrier including a label and the bottles. Roberts teaches the combination of a bottle carrier with bottles and a crate which receives the bottle carrier. Graser teaches a bottle carrier with an advertising matter label in Fig. 1 and 2. Champlin teaches a six compartment bottle carrier which receives bottom portions of the bottles. It would have been obvious to modify the crate of Koefeldt to include a carrier for the easy of removing, inserting, transporting and carrying multiple bottles as a single unit from the crate. It would have been obvious to include a label on the carrier to provide product recognition and advertisement of the product. Marks teaches a bottle with an outer label 12 covering a portion of the bottle, an inner or rear label section 14 beneath the outer label 12 is revealed through an opening 16 in the outer label to show undistorted form 36. It would have been obvious to modify the bottle carrier with label beneath the outer structure of the display crate with openings to modify the openings so that they reveal the labels on the bottle carriers carried therein. It would have been obvious to locate the labels on the bottle carrier beneath the upper edge of the display crate side wall structure to prevent the obstruction of a label from a display crate stacked thereabove.

103 Rejections

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 52-72 and 97-99 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koefeldt in view of Roberts, Graser and Carroll et al. (Carroll).

Koefelda discloses a low depth nestable display crate capable of holding a bottle carrier and bottles and includes the floor, sidewalls and endwalls, the upper wall portion of the sidewalls including spaced sidewall tooth members extending upwardly from a lower portion and defining display openings between the teeth, the display openings are sized to reveal labels on bottle carriers when such carriers are placed in the crate, the endwall lower wall portion defining an endwall cut-out, tooth members and a handle bar integrally molded with the teeth, clearances are provided below, above and between the handle bar and the bottle carrier to enable a user's hand to completely encircle the handle bar. Koefelda discloses the invention except for the bottle carrier including a label and the elongation of the display opening in the horizontal direction. Roberts teaches the combination of a bottle carrier and a crate which receives the bottle carrier. Graser teaches a bottle carrier with an advertising matter label in Fig. 1 and 2. It would have been obvious to modify the crate of Koefelda to include a carrier for the easy of removing, inserting, transporting and carrying multiple bottles as a single unit from the crate. It would have been obvious to include a label on the carrier to provide product recognition and advertisement of the product. Note that the spaces between the teeth of Koefelda provide an adequate view to reveal any bottle carrier. Carroll teaches elongated display openings on the front and rear sides of a stacking container allowing the contents to be viewed when the containers are stacked. It would have been obvious to modify the number and spacing of the teeth so that the openings between the teeth provide an elongated opening in the horizontal direction, a difference in shape, allowing the contents of a stackable container to be viewed more easily rather than an obstructed view when the openings are short in horizontal dimension.

Re claim 56, the teeth extend above and inwardly from the lower sidewall portion to form a shoulder between the teeth. Re claim 63, the shoulder is generally flat and positioned between the exterior surface of the lower sidewall portion and the interior bottle carrier support surface.

Re claim 62, Fig. 4 shows a beveled edge 49 that extends as a rib from the exterior surface of the sidewall towards the interior bottle carrier surface.

Re claim 69, the ratio of 2 for the number of display openings in the sidewalls to the number of endwall cut-outs would have been obvious as a matter of design choice as the ratio could be raised or lowered to modify the crate to carry more or less bottles and or carriers, respectively, as desired.

Re claim 70, the number of 4 bottle carriers per crate would have been obvious as a matter of design choice as the number of carriers per crate could be lowered or raised to modify the number of bottles transported. Also, it would have been obvious to modify the number of bottles per carrier which would provide more carriers when less bottles are held by a crate and less carriers when more bottles are held.

Re claim 71, Official notice is taken that cardboard blanks for carriers and cardboard carriers are well known in the bottle carrier art. It would have been obvious to modify the material to be cardboard to lower the expense of making the carrier as well as using a readily available, recyclable material.

Claim 62 is rejected under 35 U.S.C. 103(a) as being unpatentable over Koefeldt in view of Roberts, Graser and Carroll as applied to claim 52 above, and further in view of Apps et al. ('461) (Apps).

This rejection is made if it should be deemed that the combination doesn't disclose the rib. Apps teaches ribs 29, 35 as shown in Fig. 3, the ribs extend from the exterior surface towards the interior bottle carrier surfaces. It would have been obvious to add the ribs to reinforce the exterior walls and improve the overall strength and rigidity of the crate.

Claim 73 is rejected under 35 U.S.C. 103(a) as being unpatentable over Koefeldt in view of Roberts, Graser and Carroll as applied to claim 52 above, and further in view of Champlin et al. (Champlin).

The combination discloses the invention except for the carrier having six compartments and the carrier receiving bottom portions of the bottles. Champlin teaches a six compartment bottle carrier which receives bottom portions of the bottles. It would have been obvious to modify the bottle carrier to be of the type disclosed by Champlin and to add the advertisement to the Champlin type carrier to provide bottle segregation, to prevent bottle touching and noise associated with the bottles touching, to prevent the bottoms of the bottles from touching the crate and noise associated with the bottoms contacting the crate and to provide product recognition and advertisement of the product within the bottles.

Claims 95 and 96 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koefeldt in view of Roberts, Graser and Carroll as applied to claim 52 above, and further in view of Marks.

The Koefeldt-Roberts-Graser-Carroll combination discloses the invention except for the label revealed through a display opening. Marks teaches a bottle with an outer label 12 covering a portion of the bottle, an inner or rear label section 14 beneath the outer label 12 is revealed through an opening 16 in the outer label to show undistorted form 36. It would have been

obvious to modify the bottle carrier with label beneath the outer structure of the display crate with openings to modify the openings so that they reveal the labels on the bottle carriers carried therein. It would have been obvious to locate the labels on the bottle carrier beneath the upper edge of the display crate side wall structure to prevent the obstruction of a label from a display crate stacked thereabove.

Allowable Subject Matter

Claims 100 and 101 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Terminal Disclaimer

The terminal disclaimer filed on November 17, 2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of the full statutory term prior patent No. 5,979,654 has been reviewed and is accepted. The terminal disclaimer has been recorded.

No terminal disclaimer has been submitted for D400012.

Response to Argument

Applicant's arguments filed March 7, 2007 have been fully considered but they are not persuasive. Applicant argues that the curved corner panel of Koefeld's crate (see Fig. 14, reference no. 65) would prevent a bottle carrier of Graser's configuration with leg panels 22, 24 from being received within the crate. This argument is not persuasive since the leg panels appear to be easily deformable without damaging the panel structure, the bottle carrier could be of smaller dimensions so that the leg panels 22 and 24 of Graser do not interfere with the corner

panels of Koefeld's crate, and the configuration of the corner panel of Koefeld's crate could be modified in view of Roberts which shows a corresponding shape relationship between the bottle carrier and the outer crate.


Applicant argues that there is no motivation to combine the Robert's milk bottle crate with the crate of Koefeld because the milk bottle crate is meant to be placed in a stationary position. The milk bottle crate is portable and nothing appears to fasten the milk bottle crate to any structure to prevent its movement.

Applicant argues that two-way distinctness has not been explained. The examiner believes that since the present application is the later filed that one-way distinctness is the required obviousness. Also, it is not believed that the design-utility double patenting situation requires a two-way test.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc